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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/721,141	11/22/2000	Neelamadhaba Mahapatro	44431/233237 (JA13237-153)	7049
45979	7590	08/25/2005	EXAMINER	
PERKINS COLE LLP/MSFT P. O. BOX 1247 SEATTLE, WA 98111-1247			MEINECKE DIAZ, SUSANNA M	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/721,141

Applicant(s)

MAHAPATRO, NEELAMADHABA

Examiner

Susanna M. Diaz

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 50-71 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 50-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This non-final Office action is responsive to Applicant's response filed May 31, 2005.

Claims 50-71 are pending.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 50-71 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 50-71 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory

subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

As to technological arts recited in the preamble, mere recitation in the preamble (i.e., intended or field of use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble. Furthermore, mere intended or nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not apply, involve, use, or advance the underlying process.

Claims 50-58 produce a useful, concrete, and tangible result; however, technology is only recited in the preamble, which is insufficient to apply, involve, use, or advance the technological arts. Therefore, claims 50-58 are non-statutory.

Claims 59-67 are directed toward a computer program product; however, they do not properly conform to the computer program product format, as set forth in MPEP 2106, because the instructions are not recited as being executable. Therefore, claims 59-67 are interpreted as software *per se*, which is non-statutory subject matter.

Claims 68-71 recite a system comprising various components. It is not clear whether these components refer to hardware components, software executed on a computer/processor, or software *per se*. If these components merely refer to software *per se*, then claims 68-71 are non-statutory for the reasons discussed above in reference to claims 59-67.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 59-71 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 59-67 are directed toward a computer program product; however, they do not properly conform to the computer program product format, as set forth in MPEP 2106, because the instructions are not recited as being executable.

Claims 68-71 recite a system comprising various components. It is not clear whether these components refer to hardware components, software executed on a computer/processor, or software *per se*. The claims should be amended to clarify the intended scope of "components."

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

Art Unit: 3623

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 50-71 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown et al. (U.S. Patent No. 5,671,361).

Brown discloses a computer-implemented method for generating a schedule for a project, the method comprising:

[Claim 50] providing tasks of the project, a task specifying one or more resources that are to be used to complete the task, at least one task specifying multiple resources, a resource having a duration (col. 3, lines 15-29, 56-64; col. 4, lines 6-44; col. 6, line 17 through col. 7, line 50, including Tables 1-3 – Brown's activities are equivalent to the claimed tasks. Brown's resources are equivalent to the claimed resources);

automatically dividing tasks into assignments, an assignment being a portion of a task that can be completed using a single resource (col. 6, line 17 through col. 7, line 50, including Tables 1-3 – Brown's listing of resources types with the number of units needed to complete each activity is equivalent to the claimed assignments. Examiner's interpretation is supported by Table 2 in Applicant's specification and its comparison to the type of information shown in Table 1 of Brown); and

scheduling the tasks by, for the assignments of a task, determining a time when the resource of the assignment is available for the duration of the resource (col. 3, lines 15-29, 56-64; col. 6, lines 17-65); and

scheduling the assignment to be performed at the determined time such that the assignments of a task are scheduled separately (col. 4, lines 24-48);

[Claim 51] wherein the scheduling of the tasks includes:

providing priorities for the tasks (col. 3, lines 15-29, 56-64; col. 4, lines 24-48);

and

scheduling the assignments of a high priority task before scheduling the assignments of a low priority task (col. 3, lines 15-29, 56-64; col. 4, lines 24-48);

[Claim 52] wherein the scheduling of the tasks includes:

providing priorities for the tasks (col. 3, lines 15-29, 56-64; col. 4, lines 24-48);

setting a priority of assignments based on the priority of their tasks (col. 3, lines 15-29, 56-64; col. 4, lines 24-48); and

adjusting the priority of assignments based on availability of the resources of the assignments (col. 3, lines 15-29, 56-64; col. 4, lines 24-48); and

scheduling the assignments in adjusted priority order (col. 3, lines 15-29, 56-64; col. 4, lines 24-48);

[Claim 53] wherein the scheduling of the tasks includes:

providing a specification of dependencies between tasks (Fig. 3; col. 3, lines 27-29, 55-67; col. 6, lines 17-33; col. 10, lines 40-44);

scheduling the assignments of independent tasks before the assignments of dependent tasks (Fig. 3; col. 3, lines 27-29, 55-67; col. 6, lines 17-33; col. 10, lines 40-44);

[Claim 54] wherein the scheduling of the tasks includes:

providing a specification of dependencies between tasks (Fig. 3; col. 3, lines 27-29; col. 6, lines 17-33; col. 10, lines 40-44); and

scheduling the assignments of tasks so that the constraint of the task is satisfied (Fig. 3; col. 3, lines 27-29; col. 6, lines 17-33; col. 10, lines 40-44);

[Claim 55] wherein the scheduling of the tasks includes:

providing a time constraint of a task (Fig. 3; col. 3, lines 27-29, 56-64; col. 6, lines 17-65; col. 10, lines 40-44); and

scheduling the assignments of tasks so that the time constraint of the task is satisfied (Fig. 3; col. 3, lines 27-29, 56-64; col. 6, lines 17-65; col. 10, lines 40-44);

[Claim 56] wherein the scheduling of the tasks is performed on a resource-by-resource basis (col. 3, lines 15-29, 56-64; col. 4, lines 24-48; col. 6, lines 17-65);

[Claim 57] including scheduling the assignments of a resource in order of priority of the assignments (col. 3, lines 15-29, 56-64; col. 4, lines 24-48);

[Claim 58] wherein the scheduling of the assignments of tasks schedules assignments to satisfy start-on constraints before satisfying must-finish-by constraints (Fig. 3; col. 3, lines 27-29, 56-64; col. 6, lines 17-65; col. 10, lines 40-44).

[Claims 59-67] Claims 59-67 recite limitations already addressed by the rejection of claims 50-58 above; therefore, the same rejection applies. Brown's invention is a computerized system and therefore incorporates software to perform the recited functionality.

[Claims 68-71] Claims 68-71 recite limitations already addressed by the rejection of claims 50-58 above; therefore, the same rejection applies. Brown's invention is a



Art Unit: 3623

computerized system and therefore incorporates hardware and software to perform the recited functionality.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 10 am - 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Susanna M. Diaz  
Primary Examiner  
Art Unit 3623

August 22, 2005